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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE DE JESUS FRANCO VELAZQUEZ,

Defendant and Appellant.

C081594

(Super. Ct. No. CR44511)

Appointed counsel for defendant Jose De Jesus Franco Velazquez asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

Factual and Procedural Background

We provide the following brief description of the facts and procedural history of the case pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.

On May 12, 2004, defendant was fighting with his wife, who was holding their 14-month-old son in her arms. Defendant tried to pull the child from her arms but she refused to let go. Defendant then pulled a knife and showed it to his wife. When she attempted to run with the child, defendant grabbed her by the wrist and slashed the side of her head, cutting her ear. Defendant fled the scene. Defendant's wife later told police that defendant had also punched her in the stomach during the incident.¹

On June 16, 2004, defendant was charged by information with corporal injury on the parent of defendant's child (Pen. Code, § 273.5, subd. (a) – count I),² assault with a deadly weapon or by means of force likely to produce great bodily injury (§ 245, subd. (a)(1) – count II), and child endangerment (§ 273a, subd. (a) – count III).

On June 28, 2004, defendant entered a plea of no contest to count I. The trial court dismissed the remaining charges, suspended imposition of sentence, and placed defendant on three years of formal probation subject to terms and conditions, including that defendant serve 180 days in county jail with credit for 72 days of presentence custody credits. The court also imposed fees and fines.

Approximately seven months later, on February 3, 2005, the probation department filed a petition to revoke probation alleging defendant failed to report in person or in writing following his release from custody on August 18, 2004. The petition further alleged defendant's whereabouts were unknown.

On February 7, 2005, the court summarily revoked defendant's probation and issued a bench warrant for his arrest.

¹ The facts are taken from the probation report, as stipulated by the parties during the plea hearing.

² Unspecified statutory references are to the Penal Code.

On July 8, 2009, defendant admitted the probation violation and the court reinstated probation, ordering defendant to report to probation no later than October 30, 2009.

On November 6, 2009, the probation department filed a second petition to revoke probation alleging defendant failed to report in person to probation as ordered, and had not reported either in person or in writing since his release from custody on July 9, 2009. The petition further alleged defendant's whereabouts were unknown.

On February 3, 2016, defendant admitted the probation violation. The court revoked probation and referred the matter for preparation of a presentence probation report.

On March 2, 2016, the court terminated probation, sentenced defendant to the middle term of three years in state prison, awarded him 211 days of presentence custody credit (141 actual days plus 70 days of conduct credit), and imposed specified fees and fines.

Defendant filed a timely notice of appeal. He did not request a certificate of probable cause.

On June 14, 2016, the trial court entered an order pursuant to sections 1237.1 and 1237.2 amending defendant's presentence custody credits to 224 (150 actual days plus 74 conduct credits) and striking and amending certain fees and fines. An amended abstract of judgment was filed on July 5, 2016.

Discussion

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. To date, defendant has not filed a supplemental brief. Having undertaken an examination of the entire record pursuant to

Wende, we find no arguable error that would result in a disposition more favorable to defendant.

Disposition

The judgment is affirmed.

Blease, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.